

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3740 OF 2003

IN

CRIMINAL APPLICATION NO. 2401 OF 2003

IN

CRIMINAL APPLICATION NO. 2787 OF 2002

Kishanchand Khazanchand Ramani.
Residing at Plot No.118,1st floor,
Ramani Villa, T.P.S.No.4,
Bandra (W),Mumbai 400 050.

..Applicant.

v/s.

1. Raju Kishanchand Ramani
residing at 30, Sea View Palace,
48,Pali Hill, Bandra (W),
Mumbai 400 050.

2. The State of Maharashtra.

..Respondents.

Shri Subodh Desai i/b Federal & Rashmikanth, Advocate
for Applicant.

Respondent No.1 present in person.

Shri K.V.Saste, APP for respondent No.2.

CORAM: A.S.AGUIAR, J.

DATE : 27TH AUGUST, 2004.

P.C. :-

1. Criminal Application No. 3740 of 2003 is filed
by the petitioner for condonation of delay in

preferring Criminal Application No. 2401 of 2003 for restoration of Criminal Application No. 2787 of 2002 which was dismissed for default. The said application is filed by the Petitioner without prejudice to his contention that there is in fact no delay in filing the Application for restoration. The Criminal application No.2401 of 2003 is for restoration of the main Application which came to be dismissed pursuant to a self-operative order dated 31st January, 2003 passed by this Court (Khanwilkar,J) directing the petitioner to remove office objections within four weeks failing which it was understood that the matter would stand dismissed without further reference to the Court. Since the objections were not removed within the stipulated period, the petition stood dismissed as on 1st March, 2003.

2. It is the contention of the applicant that he was not aware of the order of dismissal till the second week of June, when his Solicitor's clerk informed the Solicitor that the said matter stood dismissed as on the said date. The said clerk had failed to notice the matter listed on the board of Justice Khanwilkar of 31st January, 2003 and therefore, did not inform his employers M/s Federal and Rashmikan, Advocates and

Solicitors of the same and hence no one appeared on behalf of the petitioner on that date and the said order dated 31/1/2003 came to be passed.

3. The only office objection required to be removed by the petitioner was in connection with the non-service of notice upon the respondent which was directed to be issued by order of this Court dated 7th October, 2002. It is the contention of the Applicant's Solicitor that they have supplied a copy of the Application to the registry for the purpose of issuing the notice. However, though the notice has been issued by the office, for some reason or other the same was not served upon the respondent. In this connection the Applicant's Solicitor had sent reminders dated 15th January, 2003 and 17th January, 2003 to Chief Metropolitan Magistrate.

4. Respondent No.1, who is a practising advocate and appearing in person vehemently objects to granting the Application. He has raised objection to the application contending that this Court has no jurisdiction to pass any order under Section 482 Cr.P.C. in view of an express bar under Section 362 Cr.P.C. since the writ of the order of dismissal of

the petition has been received by the lower court which has passed the impugned order. He has referred to several decisions in support of his contention.

5. The petition came to be dismissed pursuant to a self-operative order of this court directing removal of office objection within the stipulated period failing which the main application stood automatically dismissed. It is pointed out that the order dated 31st January, 2003 required the notice of the main Application to be served upon the respondents either personally or by post or courier or in any way whatsoever. The burden was therefore upon the Applicant to effect service of the notice upon the Respondent which he failed to discharge. The matter has been dismissed for default on account of inaction due to oversight of the clerk of the solicitor. The removal of office objections was purely an administrative matter. A substantive right of the petitioner cannot be done away with or prejudiced by mere inaction on the part of the clerk of the solicitor. The right of the petitioner needs to be decided on merits. The objection as to delay in filing the restoration application is without merit as there is no period of limitation fixed for filing the

application. Even otherwise the application for condonation of delay has been filed within the period of 15 days from the date the solicitor became aware of the dismissal of the petition.

6. Hence Criminal Application No.3740 of 2003 is allowed. Delay, if any, in filing the Restoration Application is condoned. Restoration Application No.2401 of 2003 is allowed. The petition is restored to file subject to petitioner removing all office objections within a period of two weeks from today. Place the main petition for admission after four weeks. Copy of the main petition is submitted to the respondent in the court. Both Applications viz. Criminal Application No.3740 of 2003 and Criminal Application No.2401 of 2003 stand disposed of.

JUDGE.